

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Modus Rex, Inc. for a certificate of public convenience and necessity to provide full facilities-based competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California Inc. and facilities-based interexchange services on a statewide basis.

Application 15-07-017
(Filed July 9, 2015)

**DECISION GRANTING MODUS REX, INC. A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE AND
INTEREXCHANGE SERVICE**

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**DECISION GRANTING MODUS REX, INC. A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE AND
INTEREXCHANGE SERVICE**

Summary

Pursuant to Public Utilities Code Section 1001, we grant Modus Rex, Inc. a certificate of public convenience and necessity to provide full facilities-based and resold local exchange telecommunications services and interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

On July 9, 2015, Modus Rex, Inc. (Modus Rex), a corporation authorized to do business in California filed an application for a certificate of public convenience and necessity (CPCN) to provide: 1) full facilities-based and resold competitive local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Citizens), and SureWest Telephone¹ (SureWest); and 2) full facilities-based interexchange services on a statewide basis.

Modus Rex proposes to provide local exchange and interexchange services primarily on a wholesale basis to other carriers and service providers, to be used for wireless and internet backhaul, distributed antenna systems, data transport facilities, broadband local loops, and other local and interexchange network

operations.² Modus Rex intends to install its facilities primarily in existing buildings and infrastructure. However, Modus Rex asserts it may need to undertake outside plant construction activities in some locations if, for example, there are no existing conduits or there is inadequate space in the existing conduits. Therefore, Modus Rex is seeking full facilities-based authority.³

Modus Rex proposes that pending implementation of General Order (GO) 170,⁴ the requested full facilities-based authority would be subject to its compliance with an expedited 21-day process for environmental review by Energy Division staff.⁵ Modus Rex further proposes that at such time GO 170 is implemented, Modus Rex be authorized to exercise full facilities-based authority in accordance with the applicable provisions of GO 170, rather than pursuant to the expedited 21-day expedited review process.⁶

Modus Rex's principal place of business is located at 149 Natoma Street, Suite 300, San Francisco CA 94105.

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term "public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

¹ SureWest was formerly known as Roseville Telephone Company.

² Application at 1.

³ Application at 2.

⁴ GO 170 was adopted by Decision (D.) 10-12-056, but later vacated by D.11-12-054. The status of GO 170 is currently pending before the Commission.

⁵ Application at 2.

⁶ Application at 4.

Modus Rex proposes to provide full facilities-based and resold competitive local exchange services, and full facilities-based interexchange services on a statewide basis, primarily on a wholesale basis to other carriers and service providers. Modus Rex states in its application that it will operate as a common carrier as defined in Section 153 of the Federal Communications Act of 1934, as amended, and will be eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act. Modus Rex also states that if granted a CPCN, it will operate as a telephone corporation as defined in Section 234(a) of the California Public Utilities Code and obey the Code, all of the Commission's rules, decisions, and orders applicable to telephone corporations.⁷ Modus Rex is a telephone corporation and a public utility subject to our jurisdiction.

3. California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Pursuant to CEQA and Rule 2.4⁸ of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

⁷ Application at 12. See "Verification and Sworn Statement on Behalf of Modus Rex, Inc."

⁸ Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

In the Proponent's Environmental Assessment Modus Rex's proposed construction activities will generally include the installation of its facilities, such as fiber optic cable and related equipment, primarily in existing conduits and other existing buildings and infrastructure, which will not result in material adverse impacts. However, Modus Rex states it may need to undertake outside plant construction activities in order to serve some customer locations if, for example, there are no existing conduits or there is inadequate space in existing conduits. Such activities may include trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures. Modus Rex anticipates that such construction would be small in scale, consisting of construction of short conduit extensions or stubs and installations of a limited number of poles or other above-ground facilities. Further, such construction would generally occur in existing roadways or other previously-developed and disturbed rights-of-way.⁹

Modus Rex anticipates that if any of these activities are necessary, they will fall within one or more categorical exemptions from CEQA. Modus Rex states that available exemptions may include construction projects involving existing facilities (CEQA Guidelines Section 15301), replacement or reconstruction (CEQA Guidelines Section 15302), new construction or conversion of small structures (CEQA Guidelines Section 15303), and construction under other available exemptions.

⁹ Application, Exhibit D (Proponent's Environmental Assessment).

Modus Rex requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. For example, in D.13-07-032,¹⁰ this Commission granted Vodex Communications Corporation full facilities-based authority subject to compliance with an expedited 21-day environmental review process, based on potential limited construction activities similar to those listed in the present application. We have granted other carriers authority to rely up on the 21-day review process to determine if a proposed project is exempt from CEQA. (*See, e.g.*, ClearLinx Network Corporation (D.06-04-063), New Path Networks, LLC (D.06-04-030), CA-CLEC LLC (D.06-04-067), Sunesys, Inc. (D.06-06-047), NextG Networks of California, Inc. (D.07-04-045), Broadband Associates International (D.07-08-026), Trillion Partners, Inc. (D.07-11-028), and Freedom Telecommunications, Inc. (D.09-11-021).)

Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will most likely be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Modus Rex to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

¹⁰ Decision Granting Vodex Communications Corporation a Certificate of Public Convenience and Necessity (Application 12-08-011).

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Modus Rex's claimed CEQA exemptions for proposed construction projects:

- Modus Rex will provide the Commission's Energy Division with:
 - A detailed description of the proposed project, including:
 - Customer(s) to be served;
 - The precise location of the proposed construction project; and
 - Regional and local site maps.
 - A description of the environmental setting, to include at a minimum:
 - Cultural, historical, and paleontological resources;
 - Biological resources; and
 - Current land use and zoning.
 - A construction workplan, to include:
 - Commission Preconstruction Survey Checklist – Archaeological Resources;
 - Commission Preconstruction Survey Checklist – Biological Resources;
 - A detailed schedule of construction activities, including site restoration activities;
 - A description of construction/installation techniques;
 - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - A list of permits required for the proposed project.
 - A statement of the CEQA exemption(s) applicable to the proposed project; and

- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Modus Rex's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Modus Rex's submittal, the Energy Division will issue either:
 - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
 - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and find that:

- Modus Rex's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Modus Rex's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Modus Rex to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Modus Rex's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Modus Rex's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

- If the Energy Division disapproves Modus Rex's claimed CEQA exemption(s) and issues a letter of denial to Modus Rex, Modus Rex must either redesign the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Modus Rex shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

Regarding Modus Rex's request that it be allowed to exercise full facilities-based authority in accordance with the provisions of GO 170 at such time that it is implemented, we find it to be premature in light of the uncertain state of GO 170. In D.10-12-056 this Commission adopted GO 170, which set forth procedures for Commission review of certain telecommunications construction projects for potential environmental impacts. On January 24, 2011, The League of California Cities, as well as a number of other entities, filed an application for rehearing of D.10-12-056, which caused the Commission to stay its Decision. On December 19, 2011, the Commission issued D.11-12-054 which granted the rehearing of D.10-12-056 and vacated GO 170. As a final decision on whether or not to adopt GO 170 has not been rendered following the grant of rehearing, it is not possible to know the ultimate state of GO 170, and we order Modus Rex to comply with the 21-day expedited review process. In the event GO 170 is adopted in the future, Modus Rex may pursue its substantive and procedural remedies to obtain the necessary relief at that time.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this

application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited-facilities based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.¹¹ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.¹² In the application, Modus Rex provided supporting documentation that \$100,000 plus an amount equal to the deposit required by AT&T, Verizon, Citizens, and/or SureWest would be available to Modus Rex for one year following certification. Since Modus Rex has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

As stated above, Modus Rex has provided documentation that it has the funds available for the deposit required by AT&T, Verizon, Citizens, and/or SureWest if necessary for interconnection.

¹¹ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

¹² The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or Interexchange Carriers is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

Therefore, no additional resources are required at this time to cover deposits.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.¹³ Modus Rex supplied biographical information on its management in Exhibit A to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Modus Rex verified that no one associated with or employed by Modus Rex as an affiliate, officer, director, partner, or owner of more than 10 percent of Modus Rex was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Modus Rex is in compliance with the requirements of D.95-12-056.

¹³ D.95-12-056 at Appendix C, Rule 4.A.

6. Tariffs

Modus Rex requests to provide service on a detariffed basis to the extent permitted under Industry Rule 5 of GO 96-B. Modus Rex will not provide basic service to residential customers, and does not currently plan to provide switched access service. However, Modus Rex has attached a draft switched access tariff, providing rates, terms, and conditions for provision of such service on a default basis (i.e., in the absence of an individually-negotiated written contract).

Commission staff reviewed Modus Rex's draft tariffs, with respect to the access tariff rates, for compliance with Commission rules and regulations. Modus Rex has no deficiencies in its draft tariffs. Modus Rex's draft switched access tariff is approved for use on a default basis.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.¹⁴ Modus Rex provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding GO 104-A, Section 2. Modus Rex states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Modus Rex, therefore, has nothing to report under this rule.

¹⁴ D.95-12-056 at Appendix C, Rule 4.E.

On a going forward basis, though, Modus Rex must file all reports required of a public utility under Commission jurisdiction.

9. Expected Customer Base

Modus Rex provided its estimated customer base for the first and fifth years of operation in its application. Therefore, Modus Rex has complied with this requirement.

10. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Applicant's request for non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.¹⁵

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Modus Rex a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, and SureWest, and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

¹⁵ While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851 – 854 has not been granted previously and is not granted here.

The CPCN granted by this decision provides benefits to Modus Rex and corresponding obligations. Modus Rex receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Modus Rex is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Modus Rex is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

12. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Modus Rex has filed motions for leave to file Exhibit F to the application as confidential materials under seal. Modus Rex represents that the information is sensitive, and disclosure could place Modus Rex at an unfair business disadvantage. We have granted similar requests in the past and do so here.

13. Categorization and Need for Hearings

In Resolution ALJ 176-3360, dated July 23, 2015 the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

14. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

15. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on July 15, 2015. No protests have been filed. A hearing is not required.
2. Modus Rex, Inc. (Modus Rex) is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
3. The Commission is the Lead Agency for this project under CEQA.
4. Modus Rex's proposed facilities-based construction activities, as described in the Application, are limited and, in some circumstances, may qualify for an exemption from CEQA.
5. The process for reviewing the applicability of the CEQA exemptions for the proposed facilities-based construction projects, as set forth in this decision, is

adequate for the Commission's purposes as the CEQA lead agency and is in the public interest.

6. The Application provides detailed information on the degree to which the proposed projects may implicate CEQA.

7. Modus Rex has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

8. Modus Rex has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

9. Modus Rex's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

10. No one associated with or employed by Modus Rex as an affiliate, officer, director, partner, or owner of more than 10 percent of Modus Rex was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

11. Modus Rex's draft tariffs comply with the Commission's requirements.

12. Modus Rex provided a map of the location of its proposed service territory.

13. Modus Rex has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding compliance with GO 104-A, Section 2.

14. Modus Rex provided an estimate of its customer base for the first and fifth year of operation.

15. Pursuant to Rule 11.4, Modus Rex filed motions for leave to file confidential materials under seal, included as Exhibit F to the application.

Conclusions of Law

1. Modus Rex should be granted a CPCN to provide full facilities-based local exchange telecommunications service in the service territories of AT&T, Verizon, Citizens, and SureWest, and interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Modus Rex should be allowed to use the Energy Division 21-day CEQA exemption process.

3. Modus Rex, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. Modus Rex's motion to file under seal its Exhibit F to the application should be granted for three years.

5. Modus Rex should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Modus Rex, Inc. (Modus Rex) to provide full facilities-based and resold local exchange telecommunications services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and SureWest Telephone, and interexchange service in California, subject to the terms and conditions set forth below.
2. The corporate identification number assigned to Modus Rex, Inc., U-7289-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
3. The certificate of public convenience and necessity granted by this decision will expire if not exercised within 12 months of the effective date.
4. Modus Rex, Inc. (Modus Rex) must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Modus Rex must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

5. Modus Rex, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

6. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Modus Rex, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Modus Rex, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

8. Modus Rex, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Applicant must pay a minimum user fee of \$100 or 0.18 percent of gross intrastate revenue, whichever is greater. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

9. Prior to initiating service, Modus Rex, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact

person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

10. Prior to initiating service, Modus Rex, Inc. must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be updated if the name or telephone number changes, or at least annually. This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at:

<http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/Carrier+Reporting+Requirements.htm>.

11. Modus Rex, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

12. Modus Rex, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

13. Modus Rex, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. The staff of the Commission's Energy Division is authorized to review, process, and act upon Modus Rex's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

15. If Modus Rex, Inc. (Modus Rex) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from

California Environmental Quality Act, Modus Rex shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act using the following procedure set forth in Ordering Paragraph 17.

16. Modus Rex will provide the Commission's Energy Division with:

- a. A detailed description of the proposed project, including:
 - i. Customer(s) to be served;
 - ii. The precise location of the proposed construction project; and
 - iii. Regional and local site maps.
- b. A description of the environmental setting, including at a minimum:
 - i. Cultural, historical, and paleontological resources;
 - ii. Biological resources; and
 - iii. Current land use and zoning.
- c. A construction workplan, including:
 - i. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - ii. Commission Preconstruction Survey Checklist – Biological Resources;
 - iii. A detailed schedule of construction activities, including site restoration activities;
 - iv. A description of construction/installation techniques;
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - vi. A list of permits required for the proposed project.
- d. A statement of the California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and

e. Documentation supporting the finding of exemption from California Environmental Quality Act.

f. The Energy Division will then review the submittal and notify Modus Rex of either its approval or its denial of Modus Rex's claim for exemption from California Environmental Quality Act review within 21 days from the time that Modus Rex's submittal is complete.

g. If the Energy Division approves Modus Rex's claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.

h. If the Energy Division disapproves Modus Rex's claimed California Environmental Quality Act exemptions, the staff will issue to Modus Rex a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

i. If the Energy Division disapproves Modus Rex's claimed California Environmental Quality Act exemption(s), Modus Rex shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full California Environmental Quality Act review, before commencing any full facilities-based construction activities.

17. Modus Rex, Inc.'s (Modus Rex) motion to file under seal its Exhibit F is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Modus Rex believes that it is necessary for this information to remain under seal for longer than three years, Modus Rex may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

18. Application 15-07-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Page 1

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(END OF ATTACHMENT A)

ATTACHMENT B**REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant must file, in this docket with reference to this decision number,¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust
Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices
Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3;
D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191,
App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88,
App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The
minimum annual User Fee is \$100, as set forth in
D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check

¹ Written acceptance filed in this docket does not reopen the proceeding.

the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

6. Applicant must file a service area map as part of its initial tariff.

7. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

8. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be updated if the name or telephone number changes, or at least annually. This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at:

<http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/Carrier+Reporting+Requirements.htm>.

10. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

12. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

13. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

15. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

16. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the

Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

18. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure

19. Applicant is exempt from Pub. Util. Code §§ 816-830.

20. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

21. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

22. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C**ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.

10. Balance sheet as of December 31st of the year for which information is submitted.
 11. Income statement for California operations for the calendar year for which information is submitted.
 12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.
- For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in

turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)